

# LYNCHBURG CITY COUNCIL

## Agenda Item Summary

MEETING DATE: **April 22, 2003 Work Session**

AGENDA ITEM NO.: 1

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Proposal to Erect a Telecommunications Tower on Linkhorne Middle School Property**

RECOMMENDATION: Authorize staff to prepare an application for a conditional use permit for the erection of a telecommunications tower on the Linkhorne Middle School property and to schedule a public hearing on the potential lease of property for the tower.

SUMMARY: The attached letter has been received from a site location representative of Alltel Communications. He proposes to lease property from the City for the erection of a fifty foot (50') high telecommunications tower on Linkhorne Middle School property. Initial communication with the representative indicated an interest in the erection of a one hundred and fifty foot (150') high tower. When this interest was discouraged, the interest in a lower tower was forwarded. Erection of the tower requires a conditional use permit. The lease of City property for this purpose requires a public hearing. A copy of the proposed form of the lease is also attached.

PRIOR ACTION(S): None

FISCAL IMPACT: Revenues of \$12,000 annually (\$1000 per month).

CONTACT(S): Kimball Payne, Tom Martin, Cynthia Page

ATTACHMENT(S): Letter, Draft Lease

REVIEWED BY: lkp

**SITES UNLIMITED, INC.**  
**ACQUISITION CONSULTANTS AND REAL ESTATE SALES**  
**2004 SNEAD AVE.**  
**COLONIAL HEIGHTS, VIRGINIA 23834**  
**804-520-8726**

April 11, 2003

Mr. Kimble Payne, City Manager  
City of Lynchburg  
900 Church Street  
Lynchburg, Virginia 24505

RE: Alltel Communications VA Baptist Site

Dear Mr. Payne,

Per our conversation this week Alltel has selected the Linkhorne Middle School as a communications tower site to improve coverage in that area. ALLTEL proposes a 50 foot tall mono pole type tower for that location. We will need an approximate lease area of 50' X 50' an easement for access, power and phone. I have visited the school and met with Mr. Standbery (principal) and spoken to Mrs. Page about a possible location at the rear of the school where trailers have been remove. There seems to be adequate space and power is very close to the area. If there is a better location please let me know. If you have any questions or you would like to meet with me at the school do not hesitate to give me a call. Thank you for your time.

Please find attached a soft copy of the proposed lease for your review.

Sincerely,

Larry Bickings  
Broker/Consultant

cc: Janet Hunter

**COMMUNICATIONS SITE**  
**OPTION AND LAND LEASE AGREEMENT**  
**AND DEED OF LEASE**

**VA. Baptist Site**  
**City of Lynchburg, Virginia**

**THIS COMMUNICATIONS SITE OPTION AND LAND LEASE AGREEMENT AND DEED OF LEASE** ("Lease") is entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between **CITY OF LYNCHBURG** ("Lessor") and **ALLTEL COMMUNICATIONS OF VIRGINIA NO.1, INC.**, a Virginia Corporation ("Lessee").

1. Option to Lease.

(a) For the sum of One Thousand and No/100 Dollars (\$1000.00) (the "Option Fee"), to be paid to Lessor by Lessee upon execution of this agreement, and other good and valuable consideration, Lessor hereby grants to Lessee the exclusive and irrevocable option to lease the Premises as defined below on the from the date hereof through and including \_\_\_\_\_, 200\_\_ (the "Initial Option Period"), on the terms and conditions set forth below ("the Option"). The Option may be extended for an additional 6 month period upon written notification to Lessor by Lessee accompanied by the payment of an additional option fee of One Thousand and 00/100 Dollars (\$1000.00) (the "Extension Fee"), delivered to Lessor prior to the expiration of the applicable option period. Should Lessee tender, and "Lessor" accept, the Extension Fee after the expiration of the Initial Term or Extended Term of this Option, the Option shall be reinstated and the Renewal Extended Term of the Option shall commence upon "Lessor"'s acceptance of the Extension Fee.

(b) During the Option Period, "Lessee" shall obtain, at its option, a title report or commitment for a leasehold title policy from a title insurance company of "Lessee"'s choice which must show no defects or restrictions of title or any liens or encumbrances which may adversely affect "Lessee"'s use of the Premises or "Lessee"'s ability to obtain leasehold financing. "Lessee" may, at its option and sole expense, record in the real estate records of the county in which the property is located a memorandum of option agreement documenting this Option to Lease between the Parties.

(c) Remedies; Liquidated Damages; Specific Performance. (a) In the event "Lessee" fails or refuses to perform any of "Lessee"'s covenants, duties, agreements or obligations under this Agreement or is otherwise in default under this Option (and "Lessor" has performed, in all material respects, all covenants, duties, agreements or obligations of the "Lessor" hereunder upon which such covenant, duty, agreement or obligation of "Lessee" is dependent), and such failure or breach remains uncured in excess of fifteen (15) days after written notice thereof from "Lessor" to "Lessee", the sole and exclusive right and remedy of "Lessor" shall be to terminate this Option by giving written notice thereof to "Lessee", in which event, "Lessor" shall retain the Option Fee and the Extension Fee, if any, paid to the "Lessor" pursuant to paragraph 1(a) as damages for such failure or refusal by "Lessee", and this Option except as expressly set forth herein to the contrary, shall be of no further force or effect, and neither "Lessor" nor "Lessee" shall have any further rights, liabilities, duties or obligations hereunder, except as expressly set forth herein to the contrary. "Lessor"'s retention of said sums is intended not as a penalty, but as liquidated damages. "Lessee" hereby waives and releases any right to (and hereby covenants that "Lessee" shall not) sue "Lessor" or seek or claim a refund of said sums (or any part thereof) on the grounds that it is an unreasonable amount and exceeds the "Lessor"'s actual damages or that its retention by the "Lessor" constitutes a penalty and not an agreed reasonable liquidated damages amount. "Lessor" hereby expressly waives any other remedies it may have including specific performance and damages for breach of contract.

(d)\_\_\_\_ In the event "Lessor" defaults in the performance of any of its obligations under this Agreement and fails to cure such default within 15 days after written notice of such default is provided by "Lessee", then "Lessee" shall be entitled to pursue any and all remedies afforded by law or in equity including but not limited to the right to have this Option specifically enforced against the "Lessor".

(e)\_\_\_\_ Entry Prior to Closing. "Lessor" hereby grants to "Lessee", its officers, agents, employees and independent contractors the right and privilege to enter upon the Property or the Easement at any time during the option period, to perform or cause to be performed tests to determine the suitability of the Property for "Lessee"'s purposes, including borings of the soil, environmental audits, engineering studies and to conduct a survey of the Property or the Easement. "Lessee" shall not unreasonably interfere with "Lessor"'s use of the Property or the Easement in conducting these activities and shall repair damages, if any, to the Property caused by the testing.

2. Leased Property. Subject to the following terms and conditions, "Lessor" leases to "Lessee" by this Deed of Lease the property described in attached Exhibit "A" ("Premises"). "Lessor" also grants to "Lessee" a non-exclusive easement during the term of this Lease for ingress, egress and regress and for the installation and transmission of utilities on property described on attached Exhibit "B" ("Easement"). Upon completion of the survey in accordance with Section 7(b) below, the description of the Premises and the description of the Easement in the survey shall be substituted for its respective description in Exhibit "A" and Exhibit "B", and in the event of any conflict, the description in the survey shall control as the description of the Premises or of the Easement.

3. Use. "Lessee" shall use the Premises for the purpose of constructing, installing, maintaining, improving and operating, at "Lessee"'s expense, a communications facility, including towers, antennae, buildings and incidental uses (collectively the "Communications Facility"). "Lessor" agrees to cooperate with "Lessee" in obtaining, at "Lessee"'s expense, all licenses and permits required for "Lessee"'s use of the Premises ("Governmental Approvals").

4. Initial Term. "Lessee" may exercise its Option to Lease by notifying "Lessor" in writing of the date "Lessee" begins construction of its Communication Facility upon the Property (the "Commencement Date"). The initial term of this Lease shall be five (5) years, beginning on the Commencement Date and terminating at midnight five (5) years thereafter ("Initial Term").

5. Renewal Term(s). "Lessee" shall have the right to extend this Lease for four (4) additional terms of five (5) years each (a "Renewal Term") on the same terms and conditions as set forth in this Lease except that the Rent shall increase as specified in paragraph 6. This Lease shall automatically be renewed for each successive Renewal Term unless "Lessee" notifies "Lessor" of "Lessee"'s intention not to renew the Lease at least 60 days prior to expiration of the then current term.

6. Rent.

(a) Beginning on the Commencement Date, "Lessee" shall pay "Lessor" the sum of One Thousand and 00/100 Dollars (\$1,000.00) per month as rental ("Rent"). Rent shall be payable on the first day of each month in advance at "Lessor"'s notice address or as otherwise specified below and shall be prorated for any partial month at the commencement or termination of this Lease, based upon the number of days in that month.

(b) In the event of termination for any reason other than nonpayment of Rent, all prepaid Rent shall be refunded to "Lessee".

(c) In the event that "Lessee" elects to renew this Lease as provided in paragraph 5, Rent shall increase by an amount equal to fifteen percent (15%) over the Rent to be paid by "Lessee" during the immediately preceding Term or Renewal Term. If the Commencement Date falls on any day other than the first of the month, Rent escalation shall be applied on the first day of the month

following the applicable anniversary of the Commencement Date. "Lessee" shall pay "Lessor" Rent during each Renewal Term ("RT") according to the following schedule:

First RT \$1,150.00 per month Third RT \$1,521.00 per month

Second RT \$1,323.00 per month Fourth RT \$1749.00 per month

7. "Lessor"'s Representations and Warranties. "Lessor" represents and warrants to the best of "Lessor"'s knowledge that (i) "Lessee"'s intended use of the Premises is not prohibited by any covenant, restriction, easement, subdivision rule or other contract which would prohibit "Lessee"'s intended use of the Premises; and (ii) there are no easements, licenses, rights of use or other encumbrances on the Premises which will interfere with "Lessee"'s intended use of the Premises.

8. Conditions Subsequent. In the event that "Lessee"'s intended use of the Premises is actually or constructively prohibited or the Premises are, in "Lessee"'s opinion, unacceptable to "Lessee" then this Lease shall terminate and be of no further force or effect.

9. Interference. "Lessor" shall not use, nor shall "Lessor" permit its "Lessee"'s, licensees, invitees or agents to use any portion of the Premises or Easement or adjoining or proximate property of "Lessor" in any way which interferes with the operations of "Lessee". "Lessee" may enforce this provision at law or in equity, or may terminate this Lease immediately upon notice to "Lessor".

10. Improvements; Utilities; Access.

(a) The Communications Facility placed on the Premises shall remain the exclusive property of the Lessee, and Lessee shall remove the Communications Facility or any portion thereof, including foundations to two feet below ground level, following any termination of this Lease, and restore the Premises to the original condition. normal wear and tear accepted.

(b) "Lessor" represents that utilities adequate for "Lessee"'s intended use of the Premises are presently available. Further, from time to time, "Lessee" shall have the right to install utilities, at "Lessee"'s expense, and/or to improve present utilities on the Premises (including but not limited to the installation of emergency power generators). "Lessee" shall have the right to permanently place utilities on (or to bring utilities across or under) the Premises and the Easement in order to service the Communications Facility throughout the term or any Renewal Term of this Agreement. "Lessor" shall, upon "Lessee"'s request, execute a separate written easement in a form which may be filed of record evidencing this right.

(c) "Lessee" shall have access to the Premises and the Communications Facility at all times, 24 hours each day, through the access drive presently existing on the Easement. "Lessor" shall maintain the access drive in good condition throughout the term of this Lease or any Renewal Term. "Lessee" may, at its own expense, construct a suitable private access drive to the Premises and the Communications Facility within the Easement. To the degree additional access is required across other property owned by "Lessor", "Lessor" shall execute an easement evidencing this right and agrees to maintain said access so that no interference is caused to "Lessee" by other "Lessee"'s, licensees, invitees or agents of the "Lessor".

11. Termination. Except as otherwise provided, this Lease may be terminated, without any penalty or further liability, immediately upon written notice or as otherwise provided below, as follows:

(a) By either party upon a default of any covenant or term of this Lease by the other party which default is not cured within 60 days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions of this Lease);

(b) By "Lessee" if it is unable to obtain or maintain any license, permit or other Governmental Approval necessary to the construction and operation of the Communications Facility or "Lessee"'s business or intended use of the Premises;

(c) By "Lessee" if the Premises or Communications Facility is damaged so as to hinder the effective use of the Communications Facility in "Lessee"'s judgment or in the event that interference, whether or not from "Lessor"'s activities or any other source, to transmissions or signals from the Communications Facility, in "Lessee"'s judgment, may not be adequately corrected or eliminated by "Lessee";

(d) By "Lessee" upon six months written notice to "Lessor", if, in "Lessee"'s reasonable judgment, network design or technology changes render the Communications Facility obsolete or unnecessary.

12. Subleases and Licenses. "Lessee" at its sole discretion shall have the right to sublease or license the Premises or any portion to others for the purpose of radio transmission and communication service. "Lessee"'s sublessee(s) shall be entitled to rights of ingress and egress to the Premises and Easement and the right to install utilities on the Premises and Easement as if said sublessee were "Lessee" under this Lease.

13. Taxes. "Lessee" shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Communications Facility. "Lessor" shall pay when due all real property taxes and all other fees and assessments attributable to the Premises.

14. Public Liability and Property Damage Insurance. "Lessee" shall, at "Lessee"'s expense, purchase and maintain in full force and effect throughout the term of this Lease, including any renewals or extensions, such public liability and property damage policies as "Lessee" may deem necessary. Such policy or policies may be through a blanket policy covering other locations, will provide not less than a combined single limit of \$1,000,000 and will name "Lessor" as additional insured.

15. Condemnation. If a condemning authority takes, or acquires by deed in lieu of condemnation, all of the Premises, or a portion sufficient to render the Premises, in the opinion of "Lessee", unsuitable for the use which "Lessee" was then making of the Premises, this Lease shall terminate as of the date the title vests in the condemning authority. "Lessor" and "Lessee" shall share in the condemnation proceeds in proportion to the values of their respective interests in the Premises (which for "Lessee" shall include, where applicable, the value of its Communications Facility, moving expenses, prepaid rent and business dislocation expenses). Should "Lessee" elect not to terminate this Lease, the rent due during the remainder of the Lease term shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority.

16. Environmental Matters.

(a) "Lessor"'s Obligations. "Lessor" represents that, to the best of "Lessor"'s knowledge, no Hazardous Materials are presently located on the Premises or Easement, and "Lessor" agrees that it will provide, at no cost or expense to "Lessee", for the removal of any Hazardous Materials if, after the Commencement Date of this Lease, Hazardous Materials are brought onto the Premises or Easement by "Lessor", its agents, servants, employees, licensees, invitees or contractors. If after "Lessee" takes possession of the Premises Hazardous Materials are discovered to exist on, under or beneath the Premises, "Lessee" may terminate this Lease and "Lessee" shall owe no further duties, obligations or liability to "Lessor".

(b) "Lessee"'s Obligations. "Lessee" shall comply with all laws, ordinances, rules, orders or regulations applicable to Hazardous Materials. "Lessee" shall not use the Premises or the Easement for treatment, storage, transportation to or from, use or disposal of Hazardous Materials (other than petroleum products necessary for the operation of an emergency electrical generator to serve the Communications Facility). "Lessee" shall be responsible for any expense incident to the abatement or compliance with the requirements of any federal, state or local statutory or regulatory

requirements caused, directly or indirectly, by the activities of the "Lessee" or "Lessee"s agents, employees or contractors.

As used in this Lease, "Hazardous Materials" shall mean any and all polychlorinated biphenyls, petroleum products, asbestos, urea formaldehyde and other hazardous or toxic materials, wastes or substances, any pollutants, and/or contaminants, or any other similar substances or materials which are defined or identified as such in or regulated by any federal, state or local laws, rules or regulations (whether now existing or hereinafter enacted) pertaining to environmental regulations, contamination, cleanup or any judicial or administrative interpretation of such laws, rules or regulations or any substance that after release into the environment and upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly through food chains will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities.

17. Hold Harmless. "Lessor" agrees to defend, indemnify and hold harmless "Lessee" from and against any and all claims, costs (including reasonable attorneys fees) and liabilities arising from "Lessor"s use or occupancy of the Premises, or from "Lessor"s performance or failure to perform under this Lease, or from any defect in the title to the Premises, or from the presence of any Hazardous Materials on the Premises prior to the Commencement date, or thereafter if brought onto the Premises by "Lessor" or "Lessor"s agents, employees, licensees, invitees or contractors.

18. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, by certified mail, return receipt requested, or by overnight service having a record of receipt to the addresses indicated below:

If to Lessor, to:

City of Lynchburg  
c/o City Manager  
P.O. Box 60  
Lynchburg, Virginia 24505  
(434) 847-1443 Ext. 223

\_\_\_\_\_ Tax Identification No.

Hand Delivery Address (if different):

City of Lynchburg  
c/o City Manager  
900 Church Street  
Lynchburg, Virginia 24505

If to "Lessee", to:

ALLTEL Communications of Virginia No.1, Inc.  
c/o ALLTEL Communications, Inc.  
P.O. Box 2177  
Little Rock, AR 72203-2177  
Attn: Property Management Dept.

Hand Delivery Address:

ALLTEL Communications of Virginia No.1, Inc  
c/o ALLTEL Communications, Inc.

One Allied Drive  
Little Rock, AR 72202  
Attn: Property Management Dept.

19. Title and Quiet Enjoyment. "Lessor" warrants it has the full right, power and authority to execute this Lease and that it has good and unencumbered title to the Premises free and clear of any liens, encumbrances or mortgages. "Lessor" further warrants that "Lessee" shall have the quiet enjoyment of the Premises during the term of this Lease. "Lessor" shall defend, protect, indemnify and hold harmless "Lessee" against any interference with "Lessee"'s use and quiet enjoyment of the Premises or breach of this paragraph 19.

20. Assignment. "Lessee" may assign this Lease provided "Lessee" promptly notifies "Lessor" of such assignment and the assignment is subject to the provisions of this Lease. Further, "Lessee" may, upon notice to "Lessor", mortgage or grant a security interest in this Lease and the Communications Facility, and may assign this Lease and the Communications Facility to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "Mortgagees"). In such event, "Lessor" shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. "Lessor" agrees to notify "Lessee" and "Lessee"'s Mortgagees simultaneously of any default by "Lessee" and to give Mortgagees the same right to cure any default as "Lessee".

21. Successors and Assigns. This Lease shall run with the Premises and shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

22. Waiver of "Lessor"'s Lien. "Lessor" hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communications Facility or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

23. Holding Over. In the event "Lessee" remains in possession of the Premises after the expiration of the Initial Term or a Renewal Term without executing a new Lease, "Lessee" shall occupy the Premises month-to-month, subject to all of the terms and conditions of this Lease insofar as consistent with such a tenancy.

24. Estoppel. Each party agrees to furnish to the other, within 10 days after request, such truthful estoppel information as the other may reasonably request.

25. Right of First Refusal. "Lessee" shall have and "Lessor" hereby gives and grants to "Lessee", the right, at "Lessee"'s option, to purchase the Premises or a portion of the Premises, prior to "Lessor" selling the Premises, or any portion of the Premises, to another ("First Refusal Option"). Prior to any sale of the Premises or any portion thereof during the term or any Renewal Term of this Lease, "Lessor" shall give "Lessee" written notice, including a copy of the fully executed offer received ("First Refusal Notice"). "Lessee" may choose to exercise its First Refusal Option by giving "Lessor" notice of its intention to purchase the Premises (or the portion under offer) within 30 days of receipt of the First Refusal Notice. "Lessee"'s purchase of the Premises under its First Refusal Option shall be on the same terms and conditions as the offer included with the First Refusal Notice, with the exception that, if the offer proposes a property exchange, "Lessee" may substitute a cash equivalent for the consideration to be given, and "Lessee" shall not be required to purchase property other than the Premises and may prorate the purchase price of any offer for the Premises and additional property based upon the square footage or acreage of the Premises compared to the total area to be purchased under the offer. If "Lessee" does not exercise its First Refusal Option by giving notice as set forth above, then the First Refusal Option shall expire and "Lessor" may proceed to sell the Premises upon the terms set forth in the offer included with the First Refusal Notice, provided the sale closes within six months of the date of that offer and provided the sale shall be subject to the

terms of this Lease.

26. Waiver of Liability. Neither "Lessor" nor "Lessee" shall be responsible or liable to the other party for any loss or damage arising from any claim to the extent attributable to any acts or omissions of other licensees or tower users occupying the communications facility or vandalism or for any structural or power failures or destruction or damage to the communications facility except to the extent caused by the negligence or willful misconduct of such party. Notwithstanding anything to the contrary in this agreement, in no event shall "Lessor" or "Lessee" be liable to the other for, and "Lessor" and "Lessee" each hereby waive the right to recover, incidental, consequential (including lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

27. Miscellaneous.

(a) The prevailing party in any litigation arising under this Lease shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(b) This Lease constitutes the entire agreement and understanding of "Lessor" and "Lessee", and supersedes all offers, negotiations and other agreements. Any amendments to said Lease must be in writing and executed by "Lessor" and "Lessee".

(c) If either "Lessor" or "Lessee" is represented by a real estate broker or agent in this transaction, that party shall be fully responsible for any fees or commission due such broker or agent and shall hold harmless the other party from any such claims arising from execution of this Agreement.

(d) "Lessor" agrees to cooperate with "Lessee" in executing any documents necessary to protect "Lessee"'s rights under this Lease or "Lessee"'s use of the Premises. "Lessee" may record this Lease or a Memorandum of Lease executed by all parties and the cost of any recording fees shall be paid by "Lessee".

(e) This Lease shall be construed in accordance with the laws of the state in which the Premises are located.

(f) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

(g) Each of the undersigned warrants that he or she has the full right, power, and authority to execute this Lease on behalf of the party indicated.

**[Remainder Of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, "Lessor" and "Lessee" have executed this Agreement effective as of the day and year first above written.

**LESSOR:**

**CITY OF LYNCHBURG**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

[Insert corporate seal]

**LESSEE:**

**ALLTEL COMMUNICATIONS Of VIRGINIA  
NO.1, INC**

By: \_\_\_\_\_

**JAMES E. MCDONALD**

Title: \_\_\_\_\_

Date: \_\_\_\_\_

[Insert corporate seal]

### **ACKNOWLEDGMENTS**

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_, to wit:

Before me, the undersigned authority, a Notary Public in and for the aforesaid County and State, personally appeared \_\_\_\_\_, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged such person to be the \_\_\_\_\_ of \_\_\_\_\_, the within named Lessor, and that as such Officer, he/she executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as \_\_\_\_\_.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF ARKANSAS

COUNTY OF PULASKI, to wit:

Before me, the undersigned authority, a Notary Public in and for the aforesaid County and State, personally appeared James E. McDonald, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged such person to be the Vice President of Network Services of ALLTEL Communications of Virginia No.1, Inc., a Virginia Corporation, the within named Lessee, and that as such Officer, he executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as Vice President of Network Services.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION** **OF PROPERTY**

The property referred to herein as Premises is located within the parent parcel described as follows:

[Insert legal description from vesting deed]

The Premises are located generally as indicated in the sketch attached hereto as Exhibit B. "Lessor" and "Lessee" agree that upon "Lessee"'s exercise of its option to Lease, "Lessee" will replace this Exhibit "A" with a revised Exhibit "A" which shall be a surveyed metes and bounds legal description of the Premises, and which shall specifically identify the length and dimension of the Premises upon which "Lessee" may construct, operate and maintain its Communications Facilities.

## **EXHIBIT "B"**

### **LEGAL DESCRIPTION OF EASEMENT**

The Easement for ingress, egress and utilities across the parent parcel described on Exhibit "A" will be twenty (20)wide and located within the hatchmarked area on the sketch below. "Lessor" and "Lessee" agree that upon "Lessee"'s exercise of its Option to lease, "Lessee" shall replace this Exhibit "B" with a revised Exhibit "B" which shall be a metes and bounds legal description of the ingress, egress and utility easement which will specifically identify the location and dimensions of the aforesaid easement.

**[insert sketch showing easement until  
receipt of surveyed easement description]**

28EAVABAPTIST\OPTION&LAND4-11.DOC